

# BANK USE PROMOTION AND SUPPRESSION OF MONEY LAUNDERING ACT [*CHAPTER 24:24*]

*Acts 2/2004, 16/2004 (s. 29)*

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# ACT

To promote the use and suppress the abuse of the banking system; to enable the unlawful proceeds of all serious crime including drug trafficking to be identified, traced, frozen, seized and eventually confiscated; to establish a Bank Use Promotion and Suppression of Money Laundering Unit; to require financial institutions and cash dealers to take prudential measures to help combat money laundering; and to provide for matters connected with or incidental to the foregoing.

PART I

PRELIMINARY

**1 Short title and commencement**

- (1) This Act may be cited as the Bank Use Promotion and Suppression of Money Laundering Act [*Chapter 24:24*].
- (2) Part IV shall come into operation on a date to be fixed by the President by statutory instrument, and the remainder of the Act shall come into operation on the day of its publication in the *Gazette*.

**2 Interpretation**

In this Act—

“account” means any facility or arrangement by which a financial institution does any one or more of the following—

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency or transfers into or out of the account;
- (c) pays cheques or payment orders drawn on a financial institution, or collects cheques or payment orders on behalf of a person;
- (d) supplies a facility or arrangement for a safety deposit box;

“cash” means Zimbabwean coins and banknotes that are currently designated as legal tender;

“cash dealer” means a person who does any one or more of the following:-

- (a) carrying on the business of an insurer, an insurance intermediary, a securities dealer or stock broker, a futures broker, or an operator of a gaming house, casino or lottery;
- (b) issuing, selling or redeeming travellers’ cheques, money orders or similar instruments, dealing in bullion, or collecting, holding and delivering cash as part of a business that provides payroll services;
- (c) money-changing, that is, exchanging currency, money cheques, travellers cheques or other negotiable instruments;

“cash detainable offence” means any one of the following offences in respect of which cash may be seized from a person in anticipation of prosecuting that person for the offence—

- (a) a contravention of a compliance order referred to in paragraph (b), (e) or (g) of subsection (1) or subsection (2) of section *nineteen*; or
- (b) a contravention of section *twenty* relating to a breach of section *eleven* or subsection (1) of section *fourteen* or section *fifteen*; or
- (c) a contravention of subsection (1) of section *twenty*; or
- (d) a contravention of subsection (1) of section *twenty-two*;

“compliance order” means an order issued in terms of section *nineteen* or *thirty*, as the case may be;

“currency” means the coin and banknotes of Zimbabwe or of a foreign country that has been designated as legal tender and is ordinarily used and accepted as a medium of exchange in the country of issue, and the terms “Zimbabwean currency” and “foreign currency” shall be construed accordingly;

“defendant” means a person suspected of or charged with—

- (a) a serious offence; or
- (b) a cash detainable offence; or
- (c) an offence referred to in section *thirty-two*;

whether or not he or she has been convicted of the offence;

“designated institution” means any person designated in the First Schedule;

“Detained Cash Trust Account” means the Detained Cash Trust Account referred to in subsection (1) of section *thirty-seven*;

“Director” means the Director of the Unit appointed in terms of subsection (3) of section *three*;

“disclosure order” means an order issued in terms of section *eighteen* or *twenty-nine*, as the case may be;

“document” means any record of information, and includes anything that—

- (a) is written; or
- (b) contains marks, figures, symbols, or perforations that have meaning and can be interpreted by persons qualified to do so; or
- (c) has sounds, images or writings that can be produced, with or without the aid of anything else; or
- (d) is a map, plan, drawing, photograph or similar thing;

“finance agent” means a person who discounts private sale agreements, that is, agreements under which goods are sold by another person who is not a registered operator as defined in the Value Added Tax Act [*Chapter 23:12*];

“financial institution” means—

- (a) any banking institution registered or required to be registered in terms of the Banking Act [*Chapter 24:20*]; or
- (b) any building society registered or required to be registered in terms of the Building Societies Act [*Chapter 24:02*]; or
- (c) the People’s Own Savings Bank established in terms of the People’s Own Savings Bank of Zimbabwe Act [*Chapter 24:22*]; or
- (d) the Reserve Bank;

“fixed date” means the date fixed or specified in terms of subsection (2) of section *one* as the date of commencement of this Act or Part IV, as the case may be;

“gift” includes any property or benefit transferred by a person to another person directly or

indirectly—

- (a) after the commission of a serious offence by the first person; or
- (b) for a consideration the value of which is significantly less than the value of the consideration provided by the first person; or
- (c) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;

“identity document” means—

- (a) a document issued to a person in terms of subsection (1) or (2) of section 7 of the National Registration Act [*Chapter 10:17*], or a passport or drivers licence issued by or on behalf of the Government of Zimbabwe; or
- (b) any visitors entry certificate or other certificate or permit issued to a person in terms of the Immigration Act [*Chapter 4:02*], or in terms of any enactment relating to refugees; or
- (c) any passport, identity document or drivers licence issued by a foreign government;

“interest”, in relation to cash, includes either or both of the following—

- (a) any beneficial interest whatsoever in the cash, whether present, future or contingent;
- (b) a right, power or privilege in connection with the cash;

“inspector” means a person referred to in section *five*;

“law enforcement agency” means the Police Force (including a member of the Police Constabulary as defined in section 2 of the Police Act [*Chapter 11:10*]) or an intelligence service maintained by the Government, or any agency assigned by an enactment to maintain and enforce the law;

“Minister” means the Minister of Finance and Economic Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“moneylender” means a person licensed as a moneylender under the Moneylending and Rates of Interest Act [*Chapter 14:14*];

“negotiable instrument” means any bill of exchange, letter of credit, cheque, draft or other document, whether negotiable or not, which has been drawn or issued either inside or outside Zimbabwe and is intended to enable any person to obtain, either directly or indirectly, any sum of money, whether in Zimbabwean or foreign currency;

“parastatal” means any corporate body—

- (a) established by or in terms of any Act of Parliament for special purposes specified in that Act; or
- (b) wholly owned or controlled by the State;

“proceedings” means any procedure conducted by or under the supervision of a judge or magistrate in relation to any alleged or proven offence, or cash held in connection with such offence, and includes an inquiry, investigation, or preliminary or final determination of facts;

“property” means currency and all other real or personal property of every description, whether situated in Zimbabwe or elsewhere, tangible or intangible, and includes any interest in such property;

“property of or in the possession or control of any person” includes any gift made by that person;

“relevant financial business” means business referred to in the Second Schedule;

“Reserve Bank” means the Reserve Bank of Zimbabwe referred to in section 4 of the Reserve Bank of Zimbabwe Act [Chapter 22:15];

“serious offence” means an offence—

- (a) punishable by imprisonment for a period of twelve months or more, with or without the option of a fine;
- (b) against a law of a foreign State, in relation to acts or omissions which, had they occurred in Zimbabwe, would have constituted an offence referred to in paragraph (a);

“tainted property” has the meaning given to that term in section 2 of the Serious Offences (Confiscation of Profits) Act [Chapter 9:17];

“trader” means a person referred to in paragraph (a) of section *ten*;

“Unit” means the Bank Use Promotion and Suppression of Money Laundering Unit established in terms of section *three*;

“unit trust scheme” has the meaning given to that term in section 2 of the Collective Investment Schemes Act, 1997;

“Zimbabwe Revenue Authority” means the Authority established in terms of section 3 of the Revenue Authority Act [Chapter 23:11].

(2) A reference in this Act to—

- (a) a male or female person includes, where appropriate, a corporate body;
- (b) money laundering or laundering the proceeds of a serious offence means any act, scheme, arrangement, device, deception or artifice whatsoever by which the true origin of the proceeds of any serious offence is sought to be hidden or disguised;
- (c) a person being charged or about to be charged with a serious offence is a reference to a procedure, however described, in Zimbabwe or elsewhere, by which criminal proceedings may be commenced;
- (d) a benefit obtained or otherwise accruing to a person, includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at the request or direction of that person.

(3) For the purposes of this Act—

- (a) dealing with property held by any person shall include—
  - (i) where the property is a debt owed to that person, making a payment to any person in reduction or full settlement of the amount of the debt; or
  - (ii) converting or receiving the property as a gift; or
  - (iii) removing the property from Zimbabwe;

- (b) a person shall be deemed to have benefited from the proceeds of a serious offence if—
- (i) he or she at any time, whether before or after the fixed date, receives any payment or other reward in connection with, or derives any pecuniary advantage from the commission of a serious offence, whether committed by him or her or another person;
  - (ii) he or she receives or derives a payment, reward or pecuniary advantage in connection with the commission of a serious offence, whether he or she receives or derives such payment, reward or pecuniary advantage before or after the fixed date;
  - (iii) the value of his or her proceeds from a serious offence is the aggregate of the values of the payments, rewards or pecuniary advantages received or derived by him or her in connection with the commission of the offence.

## PART II

### BANK USE PROMOTION AND SUPPRESSION OF MONEY LAUNDERING UNIT

#### **3 Establishment of Bank Use Promotion and Suppression of Money Laundering Unit**

(1) There is hereby established an unit of the Reserve Bank, to be known as the Bank Use Promotion and Suppression of Money Laundering Unit.

(2) The staff of the Unit shall consist of the officers, inspectors or employees of the Reserve Bank referred to in section 46 of the Banking Act [*Chapter 24:20*].

(3) There shall be a Director of the Unit who shall be appointed by the Governor of the Reserve Bank.

(4) The Director may, with the approval of the Governor of the Reserve Bank, delegate to any person referred to in subsection (2) any functions conferred upon him or her by this Act, other than such power of delegation.

#### **4 Functions of the Unit**

Subject to this Act, the functions of the Unit shall be—

- (a) to promote the use by the public of financial institutions for the purpose of mediating, facilitating or obviating cash transactions; and
- (b) to receive reports of suspicious transactions issued by designated institutions or employees thereof in terms of section *twenty-six* or *twenty-eight*; and
- (c) to consider the reports referred to in paragraph (b), and if there are any reasonable grounds to suspect that the transactions are suspicious, transmit the reports to the appropriate law enforcement authorities; and
- (d) to compile statistics and records and gather and disseminate information within Zimbabwe or elsewhere on matters relating to its functions referred to in paragraphs (a) and (b); and
- (e) to issue guidelines or directions to financial institutions on matters relating to its functions referred to in paragraphs (a) and (b); and

- (f) to monitor and enforce compliance with this Act by traders, parastatals, designated institutions and other persons; and
- (g) to create training facilities and provide training to designated institutions on matters relating to its functions referred to in paragraphs (a) and (b); and
- (h) to perform such other function as may be assigned to it by or under this Act or as the Governor of the Reserve Bank may assign to it by direction in writing.

## 5 Inspectorate of the Unit

- (1) The following persons shall be inspectors of the Unit for the purposes of this Act—
  - (a) such officers, inspectors or employees of the Reserve Bank referred to in section 46 of the Banking Act [*Chapter 24:20*] as are nominated by the Governor of the Reserve Bank; and
  - (b) such officers of the department in the Ministry of Finance known as the National Economic Conduct Inspectorate as are designated by the Director of the National Economic Conduct Inspectorate; and

[Paragraph as substituted by section 29 of Act No. 16 of 2004]

- (c) such officers of the Zimbabwe Revenue Authority whose names are furnished by the Commissioner-General of the Authority to the Director;

who shall be answerable to the Director and act in accordance with any directions given by the Director.

(2) The Director shall furnish each inspector with a certificate signed by or on behalf of the Director stating that he or she has been appointed as an inspector.

(3) An inspector shall, on demand by any person affected by the exercise of the powers conferred upon him or her by this Act, exhibit the certificate issued to him or her in terms of subsection (2).

## 6 Powers of inspectors

(1) An inspector may, for the purposes specified in this section, without previous notice and at all reasonable times, enter the premises of any designated institution, trader or parastatal and, after having informed the person in charge or control of the premises of the purpose of his or her visit, may do any or all of the following—

- (a) make such examination and inquiry as he or she considers appropriate;
- (b) question any person who is employed in or at the premises;
- (c) require any person who is employed in or at the premises to produce any book, account, notice, record, list or other document;
- (d) require from any person an explanation of any entry made in any book, account, notice, record, list or other document found upon any person or premises referred to in paragraph (c);
- (e) examine and make copies of any book, account, notice, record, list or other document;
- (f) take possession of any book, account, notice, record, list or other document:

Provided that such book, account, notice, record, list or other document shall be retained only so long as may be necessary for the purpose of any examination,

investigation, trial or inquiry arising out of any contravention of this Act;  
where there are reasonable grounds for believing that such action is necessary—

- (i) in the interests of public safety or public order; or
- (ii) for the prevention, investigation or detection of an offence against this Act, for the seizure of any property which is the subject-matter of such offence or evidence relating to such offence, or for the lawful arrest of a person.

(2) An inspector may, for the purposes of any search under subsection (1), use or take with him or her on to any premises referred to in subsection (1), an assistant or police officer.

(3) Any designated institution, trader or parastatal whose premises an inspector has entered in terms of subsection (1), and any person employed by such designated institution, trader or parastatal, shall forthwith furnish the inspector with such facilities as the inspector may reasonably require for the exercise of the powers conferred on him or her by subsection (1).

(4) Nothing in this section shall be taken to require any legal practitioner to disclose any privileged communication made to him or her in that capacity.

(5) Any designated institution, trader or parastatal which hinders or obstructs or fails to comply with a lawful request of an inspector, assistant of an inspector or police officer in terms of this section shall be guilty of an offence and liable to a fine not exceeding level eight or imprisonment for a period not exceeding three years, or both.

(6) A court convicting a person of failing to give information or to produce any book, account, notice, record, list or other document when required to do so under this section may require the person, within such period as the court may specify, to comply with the requirement to give the information or to produce the book, account, notice, record, list or other document, as the case may be.

## **7 Power of Director to issue directives to financial institutions for purposes of this Act**

(1) The Director may, in consultation with the Governor of the Reserve Bank, issue to financial institutions or any class of financial institution written directives of a general character not inconsistent with this Act relating to the exercise of any functions conferred or imposed on financial institutions by or under this Act which, in the Director's opinion, are necessary or convenient to be so issued for the better administration and implementation of this Act.

(2) Without derogating from the generality of subsection (1) directives issued under subsection (1) may provide for the following matters—

- (a) for so long as section *twenty-one* remains in force—
  - (i) the hours during which financial institutions shall be open for the purpose of enabling persons to withdraw cash;
  - (ii) the priority to be given as between individuals and persons other than individuals in the allocation of cash available for withdrawal during specified hours;
- (b) accounts, returns and reports to be submitted to the Unit by financial institutions;
- (c) the form of applications, permissions, authorities, accounts, returns and reports made, granted, issued or submitted under this Act;

- (d) the suspension or cancellation of any permission or authority granted or issued in terms of this Act.
- (3) Any directive issued under this section—
  - (a) may be absolute or conditional;
  - (b) may be limited so as to expire on a specified date unless renewed;
  - (c) may be revoked or varied in the same way as it was issued;
  - (d) shall be given to such persons or published in such manner as, in the opinion of the Director, will give any person affected by it an adequate opportunity of getting to know of it.

(4) Subject to subsections (6) and (7), any financial institution which fails to comply with a directive within the period specified in the directive (or such longer period as the Director may, for good cause shown, allow in writing) shall be guilty of an offence and liable to a fine not exceeding level eight for each day during which it is in default of compliance with the directive, calculated from the day when the directive was issued.

(5) The Director may, in his or her discretion, publish a directive by notice in the *Gazette*, and such publication shall be sufficient notice to any financial institution or class of financial institution to which it is addressed.

(6) No financial institution shall be convicted of a contravention of this Act by virtue of a directive which was not published in the *Gazette* unless it is proved that—

- (a) the directive was served on the financial institution; or
- (b) the financial institution knew or avoided getting to know of the directive:

Provided that, where it is shown that reasonable steps were taken for the purpose of bringing the contents of the directive to its notice, the onus shall lie on the financial institution concerned to show that it did not know and did not avoid getting to know of the directive.

(7) Any financial institution aggrieved by a directive issued under subsection (1) may apply to a judge in chambers, and upon such application the judge may confirm, vary or set aside the directive and additionally, or alternatively, give such other order in the matter as he or she considers just.

## **8 Reports of the Unit**

(1) The Director shall, as soon as possible after the 30th June and 31st December in each year, submit to the Minister a report on the activities of the Unit during the period of six months ending on the 30th June and 31st December, as the case may be.

(2) The Minister shall lay before Parliament the report as received by him or her in terms of subsection (1) on one of the fourteen days on which Parliament next sits after he or she receives it.

## **9 Bank Use Promotion and Suppression of Money Laundering Advisory Committee**

(1) For the purpose of advising the Unit on the discharge its functions there shall be an advisory committee, called the Bank Use Promotion and Suppression of Money Laundering Advisory Committee (hereafter in this section and the Third Schedule called “the Committee”).

(2) The Committee shall consist of—

- (a) the Director, who shall be chairperson of the Committee; and
- (b) not less than three or more than nine other persons who shall as far as possible be equally representative of the interests of consumers of financial services, designated institutions and the State (including law enforcement agencies), and who shall be chosen by the Minister, after consultation with the Governor of the Reserve Bank, from persons whom the Minister considers to represent such interests.

(3) The functions of the Committee shall be, through the Director and the Governor of the Reserve Bank, to advise the Minister on—

- (a) the formulation of a national policy to promote the use by the public of financial institutions for the purpose of mediating, facilitating and obviating cash transactions; and
- (b) the formulation of a national policy to combat money laundering; and
- (c) the steps to be taken to implement such policies; and
- (d) the issue of guidelines to designated institutions for the proper performance of their duties imposed under Part IV.

(4) The Third Schedule shall apply to the qualifications of members of the Committee, their terms and conditions of office, vacation of office, suspension and dismissal, and to the procedure to be followed by the Committees at its meetings.

### PART III

#### BANK USE PROMOTION

#### **10 Traders, parastatals and moneylenders to open and keep accounts with financial institutions**

Every—

- (a) trader registered or required to be registered in terms of the Value Added Tax [*Chapter 23:12*]; and
- (b) parastatal; and
- (c) moneylender;

shall open and keep open an account with a financial institution.

#### **11 Traders and parastatals to bank surplus cash in an account within a certain time**

(1) Every trader, and parastatal shall, unless it has good cause for not doing so, deposit in an account with a financial institution no later than the close of normal business hours on the day following that on which the cash is received or on the next banking day—

- (a) cash that is surplus to the requirements of the trader or parastatal; or
- (b) cash in excess of ten million dollars (or such other amount in excess of ten million dollars as the Minister may prescribe from time to time);

whichever is the lesser amount.

(2) A trader or parastatal shall have the burden of proving, to the satisfaction of an

inspector, police officer or any court, that it has good cause for not complying with subsection (1).

## **12 Traders and parastatals to settle certain trade debts otherwise than in cash**

(1) Every trader and parastatal shall, unless it has good cause for not doing so, settle otherwise than in cash every one of its trade debts that exceeds five million dollars (or such other amount in excess of five million dollars as the Minister may prescribe from time to time).

(2) A trader or parastatal shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that it has good cause for not complying with subsection (1).

## **13 Records to be kept by traders and parastatals**

Every trader and parastatal shall keep records clearly showing—

- (a) its cash receipts on each day; and
- (b) its cash payments on each day and the person to whom and purpose for which such payments were made; and
- (c) its payments otherwise than in cash on each day and the person to whom and purpose for which such payments were made.

## **14 Unlawful trading in cash**

(1) No person other than a financial institution or moneylender shall exchange any negotiable instrument for cash at a premium.

(2) No financial institution or moneylender shall charge any premium for exchanging any negotiable instrument for cash in excess of the greater of the following amounts—

- (a) the amount of any fee, commission or other charge (exclusive of any tax imposed by the State) imposed by it for such exchange on the fixed date; or
- (b) the prescribed amount.

## **15 Maximum cash to be kept by moneylenders**

(1) No moneylender shall at any time keep for the purposes of his or her business cash in excess of ten million dollars (or such other amount in excess of ten million dollars as the Minister may prescribe from time to time) unless he or she has good cause for doing so.

(2) A moneylender shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that he or she has good cause for not complying with subsection (1).

## **16 Abolition, freezing and monitoring of charges by financial institutions for deposit, withdrawal or transfer of cash or other financial services**

(1) No financial institution shall impose any fee, commission or other charge whatsoever in respect of the deposit with it of cash by a trader, parastatal or any other person, except such fee, commission or other charge as the Minister may, after consultation with the Governor of the Reserve Bank, prescribe.

(2) The Minister may prescribe the maximum fee, commission or other charge for the withdrawal of cash or foreign currency by an account holder, or for the transfer of cash or foreign currency between account holders or between an account holder and any other person,

and if the Minister so prescribes no financial institution shall impose any fee, commission or other charge for any such service (exclusive of any tax imposed by the State) in excess of the maximum fee, commission or other charge so prescribed.

(3) The Unit shall keep under review every fee, commission or other charge imposed by any financial institution or class of financial institution for its services (other than for the deposit, withdrawal or transfer of cash or foreign currency), and for that purpose may issue to any financial institution a disclosure order requiring it to account for the basis on which it imposes the fee, commission or other charge.

(4) After reviewing in terms of subsection (3) any fee, commission or other charge imposed by a financial institution or class of financial institution, the Director may, subject to section *nineteen*, issue a compliance order requiring the financial institution or class of financial institution concerned to reduce the fee, commission or other charge in issue to a level specified in the order.

### **17 Financial institutions to offer deposit facilities on reasonable deposit requirement terms**

(1) Subject to subsection (3), every financial institution which is—

- (a) a commercial bank registered as such in terms of the Banking Act [*Chapter 24:20*] shall offer as part of the banking business carried on by it facilities for the operation of a savings or current account by any member of the public who meets the minimum financial requirements prescribed by that bank for the operation of such account;
- (b) a building society registered as such in terms of the Building Societies Act [*Chapter 24:02*] shall offer as part of the business carried on by it facilities for the operation of a savings account by any member of the public who meets the minimum financial requirements prescribed by that building society for the operation of such account.

(2) Subject to subsection (3), the People's Own Savings Bank established in terms of the People's Own Savings Bank of Zimbabwe Act [*Chapter 24:22*] shall offer as part of the business carried on by it facilities for the operation of a savings account by any member of the public who meets the minimum financial requirements prescribed the by People's Own Savings Bank for the operation of such account.

(3) No financial institution shall require as a condition of operating—

- (a) a savings account, that a person operating such account should at any time keep in such account a minimum balance of more than twenty-five thousand dollars (or such higher amount as the Minister may prescribe from time to time);
- (b) a current account, that a person operating such account should at any time keep in such account a minimum balance of more than fifty thousand dollars (or such higher amount as the Minister may prescribe from time to time).

(4) Subsection (3) does not prevent a financial institution from offering (in return for higher-value services) savings or current accounts requiring higher minimum balances than those specified in that provision, as long as such accounts are offered in addition to the accounts referred to in subsection (3).

### **18 Disclosure orders under Part III**

(1) For the purposes of monitoring compliance with this Part, the Director may issue a

disclosure order in writing requiring—

- (a) a trader, parastatal, financial institution or moneylender to disclose to an inspector any of the records kept by the trader, parastatal, financial institution or moneylender; or
- (b) a financial institution to provide him or her with a report on any transaction, account, record or client of the financial institution.

(2) Any trader, parastatal, financial institution or moneylender which is aggrieved by any order given in terms of subsection (1) may apply to a judge in chambers and upon such application the judge may—

- (a) confirm or vary the order; or
- (b) discharge the order.

(3) Any trader, parastatal, financial institution or moneylender which fails to comply with a disclosure order within fourteen days (or such longer period as the Director may, for good cause shown, allow in writing) of the date of service of the order shall be guilty of an offence and liable to a fine not exceeding level eight for each day during which it is in default of compliance with the order, calculated from the day when the disclosure order was served.

### **19 Compliance orders under Part III**

(1) Where the Director has reasonable grounds for believing that a trader, parastatal, financial institution or moneylender has failed to comply with section *ten*, *eleven*, *twelve*, *thirteen*, *fourteen*, *fifteen*, subsection (1) or (2) of *sixteen* or section *seventeen*, as the case may be, the Director may (whether or not after the issue of a disclosure order) issue a compliance order in writing to the trader, parastatal, financial institution or moneylender directing that trader, parastatal, financial institution or moneylender—

- (a) in the case of a contravention of section *ten*, to open an account with a financial institution within seven days of the date of service of the order and furnish proof satisfactory to an inspector that such account has been opened no later than seven days after it is opened; or
- (b) in the case of a contravention of section *eleven*, to deposit in a financial institution any cash held in contravention of that section no later than the close of normal business hours on the day following that on which the order is served or on the next banking day, and furnish proof satisfactory to an inspector that such deposit has been made no later than seven days after it is made; or
- (c) in the case of a contravention of section *twelve*, to cease immediately to settle any of its trade debts exceeding five million dollars in cash or such other amount as prescribed by the Minister; or
- (d) in the case of a contravention of section *thirteen*, to begin keeping the records referred to in that provision and furnish no later than seven days after the date of service of the order proof satisfactory to an inspector that it has begun to do so; or
- (e) in the case of a contravention of subsection (1) of section *fourteen*—
  - (i) to cease immediately to trade in cash in the manner described in that provision; and
  - (ii) to deposit in a financial institution any cash being so traded no later than the close of normal business hours on the day following that on which the order is

served or on the next banking day; and

- (iii) to furnish proof satisfactory to an inspector that such deposit has been made no later than seven days after it is made;

or

- (f) in the case of a contravention of subsection (2) of section *fourteen*, to cease immediately to collect the premium referred to in that section and to refund to any person who paid it the amount so collected; or
- (g) in the case of a contravention section *fifteen*, to deposit in a financial institution any cash in excess of what may lawfully be held by the moneylender concerned no later than the close of normal business hours on the day following that on which the order is served or on the next banking day, and furnish proof satisfactory to an inspector that such deposit has been made no later than seven days after it is made; or
- (h) in the case of a contravention of section *sixteen*—
  - (i) to cease immediately to collect any fee, commission or other charge collected in contravention of subsection (1) of that section and to refund to any person who paid it the amount so collected; or
  - (ii) to cease immediately to collect any excess fee, commission or other charge collected in contravention of subsection (2) of that section and to refund to any person who paid it the amount so collected;
- (i) in the case of a contravention of section *seventeen*, to cease immediately to require any person to operate a savings or current account with a minimum balance in excess of that stipulated by paragraph (a) or (b) of subsection (3) of that section.

(2) The Director may serve a compliance order in terms of paragraph (e) of subsection (1) on any person (other than a financial institution or moneylender) holding cash in circumstances which give rise to a reasonable suspicion that it is being held for the purpose of exchanging it in contravention of subsection (1) of section *fourteen*.

(3) Before taking any action in terms of subsection (1) or (2), the Director shall notify in writing the trader, parastatal, financial institution, moneylender or other person concerned of his or her intention to issue a compliance order and the reasons for doing so, and shall call upon the trader, parastatal, financial institution, moneylender or other person to show cause, within forty-eight hours or such longer time as may be specified in the notice, why such compliance order should not be issued.

(4) Any trader, parastatal, financial institution, moneylender or person who or which is aggrieved by an order given in terms of subsection (1) may apply to a judge in chambers and upon such application the judge may—

- (a) confirm or vary the order; or
- (b) discharge the order.

(5) Any trader, parastatal, financial institution, moneylender or person who or which fails to comply with a compliance order within fourteen days (or such longer period as the Director may, for good cause shown, allow in writing) of the date of service of the order shall be guilty of an offence and liable—

- (a) in a case where the compliance order relates to a contravention of section *ten*, to a fine

not exceeding level eight for each day during which it is in default of compliance with that provision, calculated from the day when the compliance order was served;

- (b) in a case where the compliance order relates to a contravention of section *eleven* or *twelve*, to a fine—
  - (i) equivalent to the value of the excess cash involved in the contravention of the relevant provision; or
  - (ii) not exceeding level ten, if the amount referred to in subparagraph (i) is not readily ascertainable;
- (c) in a case where the compliance order relates to a contravention of subsection (1) of section *fourteen*, to a fine—
  - (i) equivalent to the value of the cash exchanged in contravention of that provision; or
  - (ii) not exceeding level fourteen, if the amount referred to in subparagraph (i) is not readily ascertainable;
- (d) in a case where the compliance order relates to a contravention of section *fifteen*, to a fine—
  - (i) equivalent to the value of the excess cash held in contravention of that provision; or
  - (ii) not exceeding level ten;whichever is the greater amount;
- (e) in a case where the compliance order relates to a contravention of section *thirteen*, subsection (2) of section *fourteen*, subsection (1) or (2) of section *sixteen* or section *seventeen*, to a fine not exceeding level eight for each day during which it is in default of compliance with that provision, calculated from the day when the compliance order was served;
- (f) in a case where the compliance order is issued in terms of subsection (4) of section *sixteen*, to a fine not exceeding level eight for each day during which it is in default of compliance with that order, calculated from the day when the compliance order was served.

(6) Where a person is convicted of a cash detainable offence and any cash was seized from the convicted person in terms of Part V, such cash shall be paid from the Detained Cash Trust Account and applied towards meeting the fine.

## **20 Repeated contraventions of sections 10, 11, 12, 13, 14, 15, 16 and 17**

Where a trader, parastatal, financial institution, moneylender or other person, having initially obeyed or been convicted of contravening a compliance order, commits another contravention of section *ten*, *eleven*, *twelve*, *thirteen*, *fourteen*, *fifteen*, *sixteen* or *seventeen* (whether or not the contravention is the same provision as the one in respect of which the compliance order was issued), it shall not be necessary to serve another compliance order upon that trader, parastatal, financial institution, moneylender or other person, and he or she shall be guilty of an offence and liable to the same penalty as that for a breach of a compliance order issuable in respect of that contravention.

## **21 Temporary restrictions on cash withdrawals from financial institutions**

- (1) For a period of six months from the fixed date—
- (a) no individual shall withdraw from any account or other facility operated by him or her with a financial institution, or (if he or she operates more than one such account or facility with the same or different financial institutions) from the aggregate of such accounts or facilities, cash in excess of ten million dollars (or such other amount in excess of ten million dollars as the Minister may prescribe from time to time) within any period of twenty-four hours;
  - (b) no trader or parastatal, or person other than an individual, shall withdraw from any account or other facility operated by it with a financial institution, or (if it operates more than one such account or facility with the same or different financial institutions) from the aggregate of such accounts or facilities, cash in excess of twenty million dollars (or such other amount in excess of twenty million dollars as the Minister may prescribe from time to time) within any period of twenty-four hours;
  - (c) no financial institution shall knowingly permit any individual, trader or parastatal, or person other than an individual to withdraw from it cash in contravention of paragraph (a) or (b).

(2) Any individual who, or financial institution, trader, parastatal or person other than an individual which, contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight.

(3) The Unit may exempt any person referred to in paragraph (a) or (b) of subsection (1) from the requirements of those provisions for good cause indicated by that person on a form to be furnished by the Unit to financial institutions.

(4) The Unit may, by direction in writing, delegate to any financial institution the decision whether to exempt a person in terms of subsection (3), and may, in like manner, withdraw such delegation.

(5) If, before or after the expiry of the period referred to in subsection (1), the Minister is of the opinion that that a situation has arisen or is in existence which needs to be dealt with urgently in the interests of public order, the Minister may, by notice in a statutory instrument, keep or bring into force this section for a period not exceeding six months at a time, and may, in like manner, cause this section (other than this subsection and subsection (6)) to cease to be in force before the expiry of such period.

(6) Any notice made in terms of subsection (5) shall be laid before Parliament as soon as may be after it has been published in a statutory instrument and, if a resolution requesting the Minister to rescind the notice is passed within the next twenty-eight days on which Parliament sits after the notice is laid before it, it shall forthwith be rescinded by further notice in a statutory instrument but without prejudice to the validity of anything previously done thereunder.

## **22 Unlawful hoarding of cash**

(1) Any person, other than a trader, parastatal, moneylender or financial institution, who, otherwise than for good cause, has on his or her person, or under his or her immediate control, or upon any land or upon or in any premises, cash in excess of ten million dollars (or such other amount in excess of ten million dollars as the Minister may prescribe from time to time), shall

be guilty of an offence and liable to a fine equivalent to—

- (a) the excess cash held in contravention of this section; or
- (b) the fine not exceeding level ten;

whichever is the greater amount.

(2) A person referred to in subsection (1) shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, any good cause for not complying with that provision.

(3) The Minister may, by notice in a statutory instrument, suspend the operation of this section (other than this subsection) indefinitely or for a period specified in the notice, and may, in like manner, bring it back into operation.

## PART IV

### SUPPRESSION OF MONEY LAUNDERING

#### **23 Interpretation in Part IV**

(1) In this Part—

“applicant” means a person intending to enter into a business relationship or to carry out a transaction or transactions with a designated institution;

“transaction” means any transaction which—

- (a) is effected between a designated institution and another person, whether that other person is inside or outside Zimbabwe; and
- (b) involves or facilitates the receipt, payment or transfer of currency.

(2) Any word or expression to which a meaning is assigned in the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] shall bear the same meaning when used in this Part.

#### **24 Designated institutions to verify customers’ identity**

(1) A designated institution shall take reasonable steps to confirm the true identity of every applicant, by requiring the following—

- (a) an identity document, where the applicant is an individual; and
- (b) a certificate of incorporation together with the latest annual tax return to the Zimbabwe Revenue Authority, where the applicant is a body corporate.

(2) Where an applicant requests a designated institution to enter into—

- (a) a continuing business relationship with him or her; or
- (b) to carry out a transaction for him or her which relates to relevant financial business;

such designated institution shall take reasonable steps to establish whether that person is acting on behalf of another person.

(3) If it appears to a designated institution that an applicant referred to in subsection (2) is acting on behalf of another person, the designated institution shall take reasonable steps to establish the true identity of the person on whose behalf the applicant may be acting, whether as trustee, nominee, agent or otherwise.

(4) In determining what constitutes reasonable steps for the purpose of subsections (2) and (3), regard shall be had to all the circumstances of the case, and in particular to—

- (a) whether the applicant is a person based or incorporated in a country in which there are laws in force that prevent the use of the financial system for the purpose of money-laundering; and
- (b) the custom and practice that may from time to time be prevalent in the relevant field of business.

(5) Nothing in this section shall require the production of any evidence of identity where—

- (a) the applicant is a designated institution; or
- (b) the applicant has already produced satisfactory evidence of identity.

## **25 Designated institutions to establish and maintain customer records**

(1) A designated institution shall establish a register in which shall be recorded—

- (a) the name, address and occupation or, where appropriate, the business or principal activity of each person conducting a transaction and, if known, on whose behalf the transaction is being conducted; and
- (b) the nature and date of the transaction; and
- (c) the type and amount of currency involved; and
- (d) the type and identifying number of any account opened with the designated institution; and
- (e) if the transaction involves a negotiable instrument, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee, if any, the amount and date of the instrument and, if any, details of any endorsements appearing on the instrument; and
- (f) the name and address of the designated institution, and of the officer, employee or agent of the designated institution who prepared the report of the transaction.

(2) Records required under subsection (1) shall be kept by the designated institution for a period of at least five years from the date the business or transaction was completed.

## **26 Designated institutions to report suspicious transactions**

(1) Whenever a designated institution is a party to the transaction and has reasonable grounds to suspect that information that it has concerning the transaction may be relevant to the investigation or prosecution of a person for money laundering or a serious offence, it shall as soon as is reasonably possible in the circumstances but no later than three days after and, wherever possible, before the transaction is carried out—

- (a) take reasonable steps to ascertain the origin and ultimate destination of the funds involved, and the identity and address of any ultimate beneficiary; and
- (b) prepare a report of the transaction in accordance with subsection (2); and
- (c) communicate the information contained in the report to the Unit in writing or in such other form as the Minister may from time from time prescribe by circular to designated institutions or by notice in the *Gazette*.

(2) A report required by subsection (1) shall—

- (a) contain particulars of the matters specified in subsection (1) of section *twenty-five*; and
- (b) contain a statement of the grounds on which the designated institution holds the suspicion; and
- (c) be signed or otherwise authenticated by the chairperson of the governing body of the designated institution or by a person directly answerable to such body.

(3) A designated institution which has reported a suspicious transaction in accordance with this Part shall, if requested to do so by the Unit, give such further information as it has in relation to the transaction.

## **27 Designated institutions to establish and maintain internal reporting procedures**

(1) Every designated institution shall establish and maintain internal reporting procedures for employees to report any information which comes to their attention in the course of their employment that gives rise to suspicion that a person is engaged in money laundering and shall identify a person to whom such reports will be made.

(2) A person identified in terms of subsection (1) shall be accorded reasonable access to information that may be relevant to determine whether there are sufficient grounds to suspect that money laundering is taking or has taken place.

(3) After satisfying himself or herself that money laundering is taking or has taken place, the person to whom a report has been made shall report the matter to the Unit in terms of section *twenty-six*.

(4) A designated institution shall take appropriate steps to make employees aware of existing domestic laws, policies and procedures relating to money laundering and to provide its employees with appropriate training so that they can identify transactions that are linked to money laundering.

## **28 Reporting of suspicious transactions by employees of designated institutions**

(1) Where an employee of a designated institution has information concerning a transaction which he or she has reasonable grounds to suspect may be relevant to the investigation or prosecution of a person for money-laundering or a serious offence, the employee—

- (a) shall report the information to the person identified by the designated institution in terms of section *twenty-seven*; and
- (b) may report the information to the Unit.

(2) No employee shall be liable to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for reporting any information in terms of subsection (1), where the employee made the report in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of money-laundering or serious offence.

## **29 Disclosure orders under Part IV**

(1) The Director may, for the purposes of this Part, issue a disclosure order requiring a designated institution—

- (a) to disclose to an inspector or official of the Unit any of the records kept by the designated institution;
- (b) to provide him or her with a report on any transaction, account, record or client of the designated institution;

for the purposes of enabling the Unit to perform its functions under this Act.

(2) Any designated institution which is aggrieved by any order given in terms of subsection (1) may apply to a judge in chambers and upon such application the judge may—

- (a) confirm or vary the order; or
- (b) discharge the order.

### **30 Compliance orders under Part IV**

(1) Where the Director has reasonable grounds for believing that a designated institution has failed to comply with section *twenty-four, twenty-five, twenty-six* or *twenty-seven*, the Director may issue a compliance order in writing to the designated institution.

(2) Before taking any action in terms of subsection (1) the Director shall notify the designated institution in writing of his or her intention to issue a compliance order and the reasons for doing so, and shall call upon the designated institution to show cause, within such reasonable time as may be specified in the notice, why such compliance order should not be issued.

(3) Any designated institution which is aggrieved by an order given in terms of subsection (1) may apply to a judge in chambers and upon such application the judge may—

- (a) confirm or vary the order; or
- (b) discharge the order.

### **31 Powers of inspectors and police officers**

#### **under Part IV**

(1) Any inspector, or member of the Police Force who is accompanied by an inspector, may request a designated institution, after consultation with it, to suspend further action on any transaction for such reasonable period as will enable the Unit or the Police to perform the functions and duties conferred upon them by law.

(2) When an inspector or any member of the Police Force of or above the rank of inspector has reasonable grounds for believing that any transaction to which a designated institution is a party involves or is likely to involve money laundering or a serious offence and—

- (a) a designated institution has declined to comply with a request in terms of subsection (1); or
- (b) because of the urgency of the situation it would be impracticable to make any such request;

such inspector or member of the Police Force may issue an order in writing to the designated institution to suspend further action relating to the transaction for such reasonable period not exceeding seven days as may be specified in the order.

(3) Any designated institution which or person who is aggrieved by any order made in terms of subsection (2) may apply to a judge in chambers and upon such application the judge

may—

- (a) confirm or vary the order or subject it to such terms or conditions as he sees fit; or
- (b) discharge the order.

### **32 Offences under Part IV**

(1) If a designated institution—

- (a) fails to comply with a disclosure order or compliance order within seven days of the date of service of the order; or
- (b) fails to comply with an order issued in terms of subsection (1) of section *thirty-one* immediately or, where the designated institution makes application in terms of subsection (3) of that section, immediately after the confirmation (with or without variation) of the order;

it shall be guilty of an offence and liable to a fine not exceeding level eight for each day during which it is in default of compliance with the order.

(2) If a designated institution, having initially obeyed or been convicted of contravening a compliance order, commits another contravention of section *twenty-four*, *twenty-five*, *twenty-six* or *twenty-seven* (whether or not the contravention is the same as the one in respect of which the compliance order was issued), it shall be guilty of an offence and liable to a fine not exceeding level eight for each day during which it is in default of compliance with section *twenty-four*, *twenty-five*, *twenty-six* or *twenty-seven*, as the case may be.

## **PART V**

### **SEIZURE OF CASH UNLAWFULLY HELD**

#### *Division A: Cash Detainable Offences*

### **33 Powers of search, entry and seizure**

(1) Subject to subsection (2) and this Part, a police officer or inspector may search a person for, and seize, any cash which the police officer or inspector believes, on reasonable grounds, to be held in connection with a cash detainable offence.

(2) The search or seizure referred to in subsection (1) shall be made—

- (a) with the consent of the person concerned; or
- (b) under warrant issued in terms of section *thirty-four*; or
- (c) in emergencies in terms of section *thirty-five*.

(3) Subject to subsection (2), a police officer or inspector may enter upon any land or upon or into premises, and search the land or premises for any cash which the police officer or inspector believes, on reasonable grounds, to be held in connection with a cash detainable offence.

(4) Any person who hinders, obstructs or makes any false representation to a police officer or inspector making a search, entry or seizure for the purposes of this Part shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years, or both.

### **34 Search warrants in relation to cash held in connection with cash detainable offences**

(1) Where a police officer or inspector has reasonable grounds for believing that there is any cash held in connection with a cash detainable offence on a person, under his or her immediate control, or upon any land or upon or in any premises, the police officer or inspector may apply to a magistrate for the issue of a search warrant for the cash.

(2) On an application in terms of subsection (1), a police officer or inspector shall lay before the magistrate information on oath setting out the grounds upon which the warrant is sought and the magistrate may, subject to subsection (3) issue a warrant authorising a police officer or inspector to—

- (a) in the case of a search warrant in respect of land or premises, enter upon the land, or upon or into the premises; and
- (b) search for the cash; and
- (c) seize cash found in the course of the search which the police officer or inspector, on reasonable grounds, believes to be cash held in connection with a cash detainable offence.

(3) A magistrate shall not issue a warrant in terms of this section unless he or she is satisfied that there are reasonable grounds for issuing the warrant.

(4) A warrant issued in terms of this section shall specify—

- (a) the purpose for which the warrant is issued; and
- (b) the date on which the warrant shall cease to have effect; and
- (c) the time during which entry upon any land or premises is authorised.

(5) Subject to subsection (6), a police officer or inspector acting in accordance with a warrant issued in terms of this section may require a person to remove any clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person.

(6) A person shall not be searched in terms of this section except by a person of the same sex and with strict regard to decency.

### **35 Search in emergencies**

A police officer or inspector may search a person for cash held in connection with a cash detainable offence or enter upon land or upon or into premises and search for such cash and may seize any such cash he or she finds in the course of the search if—

- (a) he or she believes on reasonable grounds that it is necessary to do so in order to prevent the concealment, loss or destruction of the cash; and
- (b) the search, entry or seizure is made in circumstances of such seriousness and urgency as to require and justify immediate search, entry or seizure without the authority of an order of the court or a warrant issued in terms of this Part.

### **36 Inspector to be accompanied by police officer**

An inspector who intends to make any search, entry or seizure for the purposes of this Part shall—

- (a) notify the officer commanding the police district in which the inspector intends to make the search, entry or seizure; and
- (b) be accompanied by a police officer assigned to him or her or by the police officer referred to in paragraph (a):

Provided that where an inspector has reason for believing that any delay involved in obtaining the accompaniment of a police officer would defeat the object of the search, entry or seizure, he or she may make such search, entry or seizure without such police officer.

### **37 Verification of whether cash is detainable, and custody, return and forfeiture of seized cash**

(1) The Unit shall open and keep a trust account, to be called the “Detained Cash Trust Account”, with as many financial institutions and at such number of branches as it thinks necessary, in which all cash seized in terms of this Part shall be deposited and held in trust for every defendant from whom it is seized.

(2) The Unit shall issue written directions by way of circular to officers commanding every police district—

- (a) identifying the financial institutions and branches at which the Unit operates the Detained Cash Trust Account; and
- (b) prescribing the procedures and details relating to the application of subsection (6).

(3) Before seizing any cash in terms of this Part, a police officer or inspector shall afford a defendant (if he or she is present or can be readily contacted) an opportunity to show good cause why the cash should not be seized.

(4) Where a police officer or inspector seizes or intends to seize any cash in terms of this Part, the police officer—

- (a) shall, if the defendant is present at the place where it is found—
  - (i) count the cash in the presence of the defendant at the place where it is found, and—
    - A. issue to the defendant a receipt for the amount of cash thus counted and remove the cash to the nearest police station; or
    - B. desist from seizing the cash where the amount of it does not exceed the lawful amount prescribed in respect of the cash detainable offence concerned;

or

- (ii) request the defendant to count it in the presence of the police officer or inspector at the place where it is found, after which the police officer or inspector—
  - A. shall issue to the defendant a receipt for the amount of cash thus counted and remove the cash to the nearest police station; or
  - B. desist from seizing the cash where the amount of it does not exceed the lawful amount prescribed in respect of the cash detainable offence concerned;

- (b) shall, if the defendant is present at the place where it is found but the cash is of such amount as to render the counting of it on the spot impractical—
- (i) request the defendant to accompany the police officer or inspector with the cash to the nearest police station for the purpose of witnessing its deposit in a secure place; and
  - (ii) inform the defendant of a time, not later than forty-eight hours after the cash is thus deposited, when he or she, or another person authorised by him or her in writing, may be present at the police station for the purpose of witnessing the counting of the cash and collecting a receipt for the amount of cash thus counted;
- (c) shall, if the defendant is present at the place where it is seized but the cash is found in such a place or such circumstances as to render the counting of it on the spot impractical, request the defendant to accompany the police officer or inspector with the cash to the nearest police station, whereupon—
- (i) subparagraph (i) or (ii) of paragraph (a) shall apply to the counting of the cash, as if the references in that provision to the place where the cash is found are references to the police station; or
  - (ii) paragraph (b) shall apply to the counting of the cash;
- whichever course is appropriate to the circumstances of the case;
- (d) shall, where the defendant is not present at the place where it is found, secure the attendance of any two witnesses who are not police officers or inspectors for the purposes of paragraphs (a), (b) or (c), and those paragraphs shall apply as if the references in them to the defendant are references to such witnesses:

Provided that—

- (i) the witnesses shall not be required to count any cash to be seized; and
- (ii) where cash is removed from the place where it is found—
  - A. a notice in writing to that effect, and of the police station to which it has been removed, shall be prominently displayed by the police officer or inspector at the place from where it is removed; and
  - B. the appropriate receipt shall be despatched at the earliest opportunity to the defendant.

(5) Where a defendant refuses to count the cash as requested under subparagraph (ii) of paragraph (a) of subsection (4), or refuses or fails to accompany a police officer or inspector, or be present at the counting of the cash in terms of paragraph (b) or (c) of subsection (4), a police officer or inspector may count the cash seized within the next forty-eight hours after it was seized and, within that period, issue to the defendant a receipt for the amount of the cash thus counted, which amount shall be presumed to be the correct amount of the cash seized.

(6) A police officer or inspector who seizes cash in terms of this Part shall, no later than forty-eight hours after it has been counted, deposit the cash in the Detained Cash Trust Account and submit to the Unit a copy of the receipt issued in relation to such deposit together with the name and address of the defendant from whom the cash was seized.

(7) Cash held in the Detained Cash Trust Account may not be held for more than fourteen

days after seizure, unless a magistrate orders its continued detention for a period not exceeding three months from the date of seizure.

(8) Where cash has been seized in terms of this Part and, at the end of the period of seven days after its seizure, the matter has not been laid before a magistrate, any person who claims an interest in the cash may (subject to subsection (12)) apply to a magistrate for an order that the cash be returned to him or her.

(9) In granting an order for the further detention of the money, a magistrate shall satisfy himself or herself that there are reasonable grounds for the suspicion that the cash was held in connection with a cash detainable offence, and consideration is being given to institute criminal proceedings for such offence.

(10) A magistrate may subsequently order the continued detention of the cash if he or she is satisfied that the conditions set out in subsection (9) still exist, but the total period of detention shall not exceed six months, and shall be calculated from the date the order was made in terms of that subsection.

(11) Subject to subsection (12), cash detained in terms of this section may be released in whole or in part to the defendant, by order of a magistrate or the Director, after considering any views by the Director of Public Prosecutions to the contrary, upon application by or on behalf of that defendant, if it is found that its continued detention is no longer justified.

(12) Where a magistrate or the Director orders cash to be released in terms of this section, it shall not be released except by cheque transfer to an account kept with a financial institution by the defendant, and, where no such account is in existence on the date of the order, the cash shall not be released until the defendant opens such an account to enable the cash to be so transferred.

### **38 Proof of certain matters in prosecutions for cash detainable offences**

In any criminal proceedings in connection with a cash detainable offence—

- (a) a copy of a receipt issued in respect of cash seized in terms of this Part, certified by or on behalf the police officer commanding the police district in which such cash was seized, or by or on behalf of the inspector who seized the cash; or
- (b) a copy of a receipt issued in relation to a deposit of cash in the Detained Cash Trust Account, accompanied by a document giving the name and address of the person from whom it was seized, both certified by or on behalf the police officer commanding the police district in which such cash was deposited, or by or on behalf of the inspector who seized the cash;

shall be received in evidence before any court as *prima facie* proof of the fact that the cash was seized from the person named in the receipt or document and as proof of the amount of cash thus seized, and no court shall require that cash seized and detained in terms of this Part be exhibited as evidence for the purpose of such proceedings if such receipt or document is produced before it.

*Division B: Seizure and Detention of Cash or Currency Held in connection with Offences other than Cash Detainable Offences*

**39 Seizure and detention of cash that is the proceeds of crime or used in unlawful dealings in foreign currency**

(1) Notwithstanding anything to the contrary contained in the Criminal Procedure and Evidence Act [Chapter 9:07] or—

- (a) the Serious Offences (Confiscation of Profits) Act [Chapter 9:17], this Part shall apply to cash used or suspected to be used in connection with any serious offence;
- (b) the Exchange Control Act [Chapter 22:05], this Part shall apply to cash used or suspected to be used in connection with any offence of buying or borrowing foreign currency from, or selling or lending foreign currency to, any person other than a person authorised under the Exchange Control Act [Chapter 22:05];

as if such offence is a cash detainable offence.

(2) For the avoidance of doubt, it is declared that the effect of subsection (1) is that if a person suspected of committing an offence referred to in that subsection is in possession of cash (of whatever amount), such cash may be seized in accordance with this Part and detained in the Detained Cash Trust Account, and may not be released therefrom except in accordance with subsection (6) of section *nineteen* or subsections (11) and (12) of section *thirty-seven*.

**40 Seizure and detention of suspicious imports or exports of currency**

(1) A police officer or inspector may seize and detain any currency which is being imported into or exported from Zimbabwe if such currency is more than the amount prescribed by the Minister, and he or she has reasonable grounds to suspect that—

- (a) either the currency was derived from the commission of a serious offence or the currency is intended to be used in the commission of a serious offence; or
- (b) the currency is being imported into or exported from Zimbabwe in contravention of the Exchange Control Act [Chapter 22:05].

(2) Currency seized and detained in terms of subsection (1) shall be deposited in the Detained Cash Trust Account and may not be held for more than seven days after such seizure, unless a magistrate orders its continued detention for a period not exceeding three months from the date of seizure.

(3) In granting an order for the further detention of the currency, a magistrate should satisfy himself or herself that there are reasonable grounds for the suspicion referred to in subsection (1), and the continued detention of the currency is justified so as to enable the investigation of its origin or derivation, and consideration is being given to institute criminal proceedings in Zimbabwe or elsewhere for an offence connected to such currency against the person who was in possession of the currency.

(4) A magistrate may subsequently order the continued detention of the currency if he or she is satisfied that the conditions set out in subsection (3) still exist, but the total period of detention shall not exceed two years, and shall be calculated from the date the order was made in terms of that subsection.

(5) Subject to subsection (6), currency detained in terms of this section may be released in whole or in part to the person on whose behalf it was imported or exported, by order of a

magistrate or an inspector, after considering any views by the Director of Public Prosecutions to the contrary, upon application by or on behalf of that person, if it is found that its continued detention is no longer justified.

- (6) No currency detained under this section shall be released where—
- (a) an application is made for the purpose of—
    - (i) the forfeiture or confiscation of the whole or any part of the currency; or
    - (ii) its restraint pending determination of its liability to forfeiture or confiscation;
  - or
  - (b) proceedings are instituted in Zimbabwe or elsewhere against any person for an offence with which the currency is connected;

unless and until the proceedings relating to the relevant application or the proceedings for the offence, as the case may be, have been concluded.

#### **41 Applicability of Cap. 9:17 where tainted property consists of currency, other property or both**

If a person suspected of committing a serious offence is in possession of tainted property—

- (a) consisting of currency alone, this Act shall apply to the exclusion of the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*]; or
- (b) consisting exclusively of property other than currency, the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] shall apply to the exclusion of this Act; or
- (b) consisting of both currency and property other than currency—
  - (i) this Act shall apply to such part of the property as consists of currency; and
  - (ii) the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] shall apply to such part of the property as does not consist of currency.

### PART VI

#### GENERAL

#### **42 Secrecy, immunity and protection of designated institutions**

(1) This Act shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by law or otherwise.

(2) No action, suit or other proceedings shall lie against any designated institution, or an officer, employee or other representative of such designated institution, acting in the ordinary course of his or her employment or representation in relation to any action taken in good faith by that designated institution.

(3) The identity of any designated institution which makes a report to the Unit shall not be disclosed in any proceedings in a court of law without the consent of the designated institution.

#### **43 Confidentiality**

(1) Any information reported to the Unit or gathered or discovered by any inspector or officer thereof in the course of exercising his or her functions under this Act shall be

confidential to the Unit and no person shall disclose any such information to any other person or body except—

- (a) in the course of exercising his or her functions under this Act; or
- (b) to a judge in chambers for the purposes of section *seven, eighteen, nineteen, twenty-nine, thirty* or *thirty-one*; or
- (c) in accordance with the order of any court; or
- (d) for the purposes of any prosecution or criminal proceedings.

(2) An inspector or member of staff of the Unit who discloses any information referred to in subsection (1) otherwise than in accordance with that provision, or makes use of it for personal gain, shall be guilty of an offence and liable to a fine not exceeding level eight or imprisonment for a period not exceeding three years, or both.

#### **44 Immunity where official powers or functions exercised in good faith**

No suit, prosecution or other legal proceedings shall lie against the Government, the Reserve Bank, the Unit, an inspector or member of staff of the Unit or any police officer or other person in respect of anything done by or on behalf of that person, with due diligence and in good faith, in the exercise of any power or other performance of any function under this Act or any order made thereunder.

#### **45 Saving of privileges to legal profession**

Nothing contained in this Act shall be construed as derogating from the common law privilege attaching to communication made between a legal practitioner and client for the purpose of giving or receiving legal advice or to communications made between a legal practitioner, client and their agents or employees for the dominant purpose of pending or contemplated proceedings.

#### **46 Costs of applications in chambers**

A judge who determines any application in terms of section *seven, eighteen, nineteen, twenty-nine, thirty* or *thirty-one* shall make such order as to the costs of the application as he or she considers proper.

#### **47 Special jurisdiction of regional magistrates courts**

Notwithstanding anything in the Magistrates Court Act [*Chapter 7:10*], regional magistrates shall have special jurisdiction to impose the punishment prescribed for any offence against the provisions of this Act.

#### **48 Regulations**

(1) Subject to subsection (2), the Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations in terms of subsection (1) may provide penalties for contraventions thereof:

Provided that no such penalty shall exceed a fine of level eight or imprisonment for a period of six months or both such fine and such imprisonment.

**49 Saving of powers exercised under SI 171 of 2003**

Every—

- (a) order made; and
- (b) directive issued; and
- (c) property detained or seized; and
- (e) prosecution instituted;

in the valid exercise of any power in terms of the Presidential Powers (Temporary Measures) (Promotion of Banking Transactions) Regulations, 2004, published in Statutory Instrument 171 of 2003, shall (notwithstanding any lapsing of those regulations) be deemed to have been validly made, issued, detained, seized or instituted, as the case may be, in terms of this Act.

**FIRST SCHEDULE (Section 2(1))**

**DESIGNATED INSTITUTIONS**

1. A financial institution, other than the Reserve Bank.
2. A person registered as an insurer in terms of the Insurance Act [Chapter 24:07].
3. A person registered as a legal practitioner in terms of the Legal Practitioners Act [Chapter 27:07].
4. A person registered as a public accountant in terms of the Public Accountants and Auditors Act [Chapter 27:12].
5. A person registered as an estate agent in terms of the Estate Agents Act [Chapter 27:05].
6. A cash dealer.
7. A moneylender.
8. A pension fund registered in terms of the Pension and Provident Funds Act [Chapter 24:09].
9. A person carrying on the business of import/export.
10. A person carrying on the business as a manager or trustee of a unit trust or other collective investment scheme.
11. A person, other than a financial institution, who carries on the business, whether formally or informally, of providing money transmission services.

**SECOND SCHEDULE (Section 2(1))**

**RELEVANT FINANCIAL BUSINESS**

1. Acceptance of deposits by a financial institution, other than the Reserve Bank.
2. Acceptance of deposits by a person registered in terms of the Estate Agents Act [Chapter 27:05] the Legal Practitioners Act [Chapter 27:07] or the Public Accountants Act [Chapter 27:12].
3. Lending moneys.
4. Financial leasing.

5. Money transmission services.
6. Providing guarantees and commitments.
7. Deposit taking and investment business (including dealing in financial futures relating to securities, options, units in collective investment schemes and stocks and shares).
8. Life insurance business.
9. Money changing, that is, exchanging currency, money, cheques, travellers cheques or other negotiable instruments.

### THIRD SCHEDULE (Section 9)

PROVISIONS APPLICABLE TO THE BANK USE PROMOTION AND SUPPRESSION OF MONEY LAUNDERING  
ADVISORY COMMITTEE

#### ARRANGEMENT OF PARAGRAPHS

##### *Paragraph*

1. Interpretation in Third Schedule.
2. Disqualification for appointment to Committee.
3. Terms and conditions of office of members.
4. Vacation of office by members.
5. Suspension of members.
6. Dismissal of Committee.
7. Filling of vacancies on Committee.
8. Vice-chairperson of Committee.
9. Meetings and procedure of Committee.
10. Subcommittees of Committee.
11. Members of Committee and subcommittees to disclose certain connections and interests.
12. Minutes of proceedings of Committee and subcommittees.
13. Remuneration and allowances of members of Committee and subcommittees.

##### *Interpretation in Third Schedule*

1. In this Schedule—  
“member” means a member of the Committee.

##### *Disqualification for appointment to Committee*

- 2.(1) The Minister shall not appoint a person as a member and no person shall be qualified to hold office if—
  - (a) he or she is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or
  - (b) he or she has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or

discharged; or

- (c) he or she has made an assignment to or arrangement or composition with his or her creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
- (d) within the period of five years immediately preceding his or her proposed appointment, he or she has been sentenced—
  - (i) in Zimbabwe, in respect of an offence involving dishonesty; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence involving dishonesty.

(2) A person who is—

- (a) a member of Parliament; or
- (b) a member of three or more statutory bodies;

shall not be appointed as a member, nor shall he or she be qualified to hold office as a member.

(3) For the purposes of paragraph (b) of subparagraph 2—

- (a) a person who is appointed to a council, board or other body which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;
- (b) “statutory body” means—
  - (i) any commission established by the Constitution; or
  - (ii) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice President, a Minister or any statutory body or by a commission established by the Constitution.

#### *Terms and conditions of office of members*

3.(1) A member shall hold office for such period, not exceeding three years, as the Minister may fix at the time of his or her appointment.

(2) On the expiry of the period for which a member was been appointed, the member shall continue to hold office until he or she has been re-appointed or the member’s successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subsection for more than six months.

(3) A person who ceases to be a member shall be eligible for re-appointment:

Provided that no person may be re-appointed for a fifth term in office.

(4) Members shall hold office on such terms and conditions as the Minister may fix.

#### *Vacation of office by members*

4.(1) A member shall vacate office and the member’s office shall become vacant—

- (a) one month after the date the member gives notice in writing to the Minister of his or her intention to resign office or after the expiry of such other period of notice as the member and the Minister may agree; or
  - (b) on the date the member begins to serve a sentence of imprisonment in Zimbabwe or in any other country;
  - (c) if the member becomes disqualified in terms of paragraph (a), (b) or (c) of subparagraph (1) of paragraph 2, or in terms of subparagraph (2) of that paragraph, to hold office as a member; or
  - (d) if the member is required in terms of subparagraph (2) or (3) to vacate his or her office as a member.
- (2) The Minister may require a member to vacate his or her office if—
- (a) the member has been guilty of conduct which renders the member unsuitable to continue to hold office as a member; or
  - (b) the member has failed to comply with any condition of his or her office fixed in terms of paragraph 3; or
  - (c) the member has ceased to possess any qualification by reason of which he or she was appointed; or
  - (d) the member is mentally or physically incapable of efficiently performing his or her duties as a member; or
  - (e) the member contravenes paragraph 11; or
  - (f) the member or his or her spouse engages in any occupation, service or employment, or holds any asset, which in the Minister's opinion is inconsistent with his or her duties as a member.
- (3) The Minister, on the recommendation of the Committee, may require a member to vacate office if the Minister is satisfied that the member has been absent without the consent of the chairperson from three consecutive meetings of the Committee of which the member has been given at least seven days' notice, and that there was no just cause for the member's absence.

*Suspension of members*

5. The Minister—
- (a) may suspend from office a member against whom criminal proceedings have been instituted in respect of an offence for which a sentence of imprisonment without the option of a fine may be imposed; and
  - (b) shall suspend from office a member who has been sentenced by a court to imprisonment without the option of a fine, whether or not any portion has been suspended, pending determination of the question whether the member is to vacate his or her office;
- and, while that member is so suspended, the member shall not carry out any of his or her duties or be entitled to any remuneration or allowances as a member.

*Dismissal of Committee*

- 6.(1) Subject to subparagraph (2), if the Minister considers that—
- (a) the Committee has contravened this Act or any other law and has failed to rectify the contravention within a reasonable time after being required to do so by the Minister; or
  - (b) whether through disagreements amongst its members or otherwise, the Committee is unable to carry out any of its functions in terms of this Act;
- and that it is in the national interest to do so, the Minister may, by written notice to the chairperson, dismiss all the members of the Committee, and their offices shall become vacant as soon as the chairperson receives the notice.
- (2) A member who has been dismissed in terms of subparagraph (1) shall be eligible for re-appointment.

*Filling of vacancies on Committee*

- 7.(1) Within three months after a member's death or vacation of office, the Minister shall, subject to paragraph 2, appoint a person to fill the vacancy.
- (2) Within one month after dismissing all the appointed members in terms of paragraph 6, the Minister shall, subject to paragraph 2, appoint persons to fill the vacancies.

*Vice-chairperson of Committee*

- 8.(1) At its first meeting the Committee shall elect from among the members appointed in terms of subsection (2) of section *nine* a member to be the vice-chairperson of the Committee.
- (2) The vice-chairperson may at any time, by written notice to the Minister, resign his or her office as such.
- (3) Within three months after being notified of a vacancy in the office of the vice-chairperson, the Committee shall, subject to subparagraph (1), elect a member to fill the vacancy.
- (4) The vice-chairperson shall perform the functions of the chairperson whenever the chairperson is unable to perform them or the office of chairperson is vacant.

*Meetings and procedure of Committee*

- 9.(1) The Committee shall hold its first meeting on a date and place fixed by the Minister, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:
- Provided that the Committee shall meet at least six times in each financial year.
- (2) The chairperson—
- (a) may convene a special meeting of the Committee at any time; and
  - (b) shall convene a special meeting of the Committee on the written request of the Governor or Minister or not fewer than two members, which meeting shall be

convened for a date not sooner than seven days and not later than thirty days after the chairperson's receipt of the request.

(3) Written notice of a special meeting convened in terms of subparagraph (2) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

- (a) such business as may be determined by the chairperson, where he or she convened the meeting in terms of paragraph (a) of subparagraph (2); or
- (b) the business specified in the request for the meeting, where the chairperson convened the meeting in terms of paragraph (b) of subparagraph (2).

(5) The chairperson or, in the chairperson's absence, the vice-chairperson, shall preside at all meetings of the Committee:

Provided that, if the chairperson and vice-chairperson are both absent from any meeting of the Committee, the members present may elect one of their number to preside at that meeting as chairperson.

(6) The quorum at any meeting of the Committee shall be a majority of the members.

(7) Subject to subparagraph (11), anything authorised or required to be done by the Committee may be decided by a majority vote at any meeting of the Committee at which a quorum is present.

(8) With the approval of the other members, the chairperson may invite any person to attend a meeting of the Committee or of a subcommittee, where the chairperson considers that the person has special knowledge or experience in any matter to be considered by the Committee or the subcommittee, as the case may be, at that meeting.

(9) A person invited to attend a meeting of the Committee or of a subcommittee in terms of subparagraph (8) may take part in the proceedings of the Committee concerned or the subcommittee as if he or she were a member thereof, but shall not have a vote on any question before the Committee or subcommittee, as the case may be.

(10) At all meetings of the Committee each member present shall have one vote on any question before the Committee:

Provided that—

- (i) in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote;
- (ii) no member shall take part in the consideration or discussion of, or vote on, any question before the Committee which relates to his or her vacation of office as a member.

#### *Subcommittees of Committee*

10.(1) For the better exercise of its functions, the Committee may establish one or more subcommittees in which it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a subcommittee shall not prevent the

Committee from itself exercising that function, and the Committee may amend or rescind any decision of the subcommittee in the exercise of that function.

(2) On the establishment of a subcommittee the Committee may appoint to the subcommittee persons who are not members of the Committee.

(3) The chairperson of the Committee or of a subcommittee may at any reasonable time and place convene a meeting of that subcommittee.

(4) The procedure of the subcommittee shall be as fixed from time to time by the Committee.

(5) Subject to this paragraph, subparagraphs (2) to (7) of paragraph 9 shall apply, *mutatis mutandis*, to subcommittees and their members as they apply to the Committee and its members.

*Members of Committee and subcommittees to disclose certain connections and interests*

11.(1) In this paragraph—

“relative”, in relation to a member of the Committee or of a subcommittee, means the member’s spouse, child, parent, brother or sister.

(2) If a member of the Committee or of a subcommittee, or a relative of such a member, owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his functions as a member, the member shall forthwith disclose the fact to the Committee or the subcommittee, as the case may be.

(3) A member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Committee or the subcommittee, as the case may be, which relates to any interest, property or right referred to in that subparagraph.

(4) Any person who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months, or both.

*Minutes of proceedings of Committee and of subcommittees*

12.(1) The Committee shall cause minutes of all proceedings of and decisions taken at any meeting of the Committee or of a subcommittee to be entered in books kept for the purpose.

(2) Any minutes referred to in subparagraph (1) which purport to be signed by the chairperson of the meeting of the Committee or the subcommittee concerned, as the case may be, to which the minutes relate or by the chairperson of the next following meeting, shall be accepted for all purposes as *prima facie* proof of the proceedings of and decisions taken at that meeting.

*Remuneration and allowances of members of Committee and subcommittees*

13. Members of the Committee and of subcommittees shall be paid from the funds of

the Reserve Bank—

- (a) such remuneration, if any, as the Minister may fix for members of the Committee or members of subcommittees, as the case may be, generally; and
- (b) such allowances, if any, as the Minister may fix to meet any reasonable expenses incurred by a member in connection with the business of the Committee or the subcommittee, as the case may be.